General Assembly **Substitute Bill No. 5607**

January Session, 2001

AN ACT ESTABLISHING A COMPREHENSIVE AFFORDABLE PRESCRIPTION DRUG PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17b-490 of the general statutes is repealed and the following is substituted in lieu thereof:

As used in sections 17b-490 to 17b-498, inclusive, as amended by this act:

(a) "Pharmacy" means a pharmacy licensed under section 20-594 or a pharmacy located in a health care institution, as defined in subsection (a) of section 19a-490, which elects to participate in Part A and Part B of the program;

(b) "Prescription drugs" means (1) legend drugs, as defined in section 20-571, (2) any other drugs which by state law or regulation require the prescription of a licensed practitioner for dispensing, except products prescribed for cosmetic purposes as specified in regulations adopted pursuant to section 17b-494, as amended by this act, and on and after September 15, 1991, diet pills, smoking cessation gum, contraceptives, multivitamin combinations, cough preparations and antihistamines, and (3) insulin, insulin syringes and insulin needles;

(c) "Reasonable cost" means the cost of the prescription drug determined in accordance with the formula adopted by the

Commissioner of Social Services in regulations for medical assistance purposes plus a dispensing fee equal to the fee determined by said commissioner for medical assistance purposes;

(d) "Resident" means a person legally domiciled within the state for a period of not less than one hundred eighty-three days immediately preceding the date of application for inclusion in Part A or Part B of the program. Mere seasonal or temporary residences within the state, of whatever duration, shall not constitute domicile;

(e) "Disabled" means a person over eighteen years of age who is receiving disability payments pursuant to either Title 2 or Title 16 of the Social Security Act of 1935, as amended;

(f) "Commissioner" means the Commissioner of Social Services;

(g) "Income" means adjusted gross income as determined for purposes of the federal income tax plus any other income of such person not included in such adjusted gross income minus Medicare Part B premium payments. The amount of any Medicaid payments made on behalf of such person or the spouse of such person shall not constitute income;

(h) "Program" means the Connecticut Pharmaceutical Assistance Contract to the Elderly and the Disabled Program otherwise known as ConnPACE. The program shall consist of Part A and Part B;

(i) "Pharmaceutical manufacturer" means any entity holding legal title to or possession of a national drug code number issued by the federal Food and Drug Administration;

(j) "Average manufacturer price" means the average price paid by a wholesaler to a pharmaceutical manufacturer, after the deduction of any customary prompt payment discounts, for a product distributed for retail sale.

Sec. 2. Section 17b-491 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) There shall be a "Connecticut Pharmaceutical Assistance Contract to the Elderly and the Disabled Program", Part A and Part B, which shall be within the Department of Social Services. **[**The**]** Part A of the program shall consist of payments by the state to pharmacies for the reasonable cost of prescription drugs dispensed to eligible persons minus a copayment charge, effective July 1, 1993, of twelve dollars for each prescription dispensed under Part A of the program. The pharmacy shall collect the copayment charge from the eligible person at the time of each purchase of prescription drugs, and shall not waive, discount or rebate in whole or in part such amount. Part B of the program shall consist of a drug benefit that allows recipients to purchase prescriptions at the average wholesale price reduced by twelve per cent or other such price as may be calculated under the Medicaid program.

(b) Notwithstanding the provisions of subsection (a) of this section, effective September 15, 1991, payment by the state to a pharmacy under Part A of the program may be based on the price paid directly by a pharmacy to a pharmaceutical manufacturer for drugs dispensed under the program minus the copayment charge, plus the dispensing fee, if the direct price paid by the pharmacy is lower than the reasonable cost of such drugs.

(c) Effective September 15, 1991, reimbursement to a pharmacy for prescription drugs dispensed under Part A of the program shall be based upon actual package size costs of drugs purchased by the pharmacy in units larger than or smaller than one hundred.

(d) The commissioner shall establish an application form whereby a pharmaceutical manufacturer may apply to participate in the program. Participation in the program shall require participation in both Part A and Part B. Upon receipt of a completed application, the department shall issue a certificate of participation to the manufacturer. Participation by a pharmaceutical manufacturer shall require that the department shall receive a rebate from the pharmaceutical manufacturer. Rebate amounts for brand name prescription drugs

shall be equal to those under the Medicaid program. Rebate amounts for generic prescription drugs shall be established by the commissioner, provided such amounts may not be less than those under the Medicaid program. A participating pharmaceutical manufacturer shall make quarterly rebate payments to the department for the total number of dosage units of each form and strength of a prescription drug which the department reports as reimbursed to providers of prescription drugs, provided such payments shall not be due until thirty days following the manufacturer's receipt of utilization data from the department including the number of dosage units reimbursed to providers of prescription drugs during the quarter for which payment is due.

(e) All prescription drugs of a pharmaceutical manufacturer that participates in the program pursuant to subsection (d) of this section shall be subject to prospective drug utilization review. Any prescription drug of a manufacturer that does not participate in the program shall not be reimbursable, unless the department determines the prescription drug is essential to program participants.

Sec. 3. Section 17b-491a of the general statutes is repealed and the following is substituted in lieu thereof:

[(a) The Commissioner of Social Services may establish a plan for the prior authorization of (1) any initial prescription for a drug covered under the Medicaid, state-administered general assistance, general assistance or ConnPACE program that costs five hundred dollars or more for a thirty-day supply, or (2) any early refill of a prescription drug covered under any of said programs. The Commissioner of Social Services shall establish a procedure by which prior authorization under this subsection shall be obtained from an independent pharmacy consultant acting on behalf of the Department of Social Services, under an administrative services only contract. If prior authorization is not granted or denied within two hours of receipt by the commissioner of the request for prior authorization, it shall be deemed granted.**]**

[(b)**]** (a) The Commissioner of Social Services shall, to increase cost-efficiency or enhance access to a particular prescription drug, establish a plan under which the commissioner may designate specific suppliers of a prescription drug from which a dispensing pharmacy shall order the prescription to be delivered to the pharmacy and billed by the supplier to the department. For each prescription dispensed through designated suppliers, the department shall pay the dispensing pharmacy a handling fee not to exceed four hundred per cent of the dispensing fee established pursuant to section 17b-280. In no event shall the provisions of this subsection be construed to allow the commissioner to purchase all prescription drugs covered under the Medicaid, state-administered general assistance, general assistance and ConnPACE programs under one contract.

[(c)**]** (b) Notwithstanding the provisions of section 17b-262 and any regulation adopted thereunder, on or after July 1, 2000, the Commissioner of Social Services may establish a schedule of maximum quantities of oral dosage units permitted to be dispensed at one time for prescriptions covered under the Medicaid, state-administered general assistance and general assistance programs based on a review of utilization patterns.

[(d)**]** (c) A plan or schedule established pursuant to subsection (a) **[**, (b) or (c)**]** or (b) of this section and any revisions thereto shall be submitted to the joint standing committees of the General Assembly having cognizance of matters relating to public health, human services and appropriations and the budgets of state agencies. Within sixty days of receipt of such a plan or schedule or revisions thereto, said joint standing committees of the General Assembly shall approve or deny the plan or schedule or any revisions thereto and advise the commissioner of their approval or denial of the plan or schedule or any revisions thereto. The plan or schedule or any revisions thereto shall be deemed approved unless all committees vote to reject such plan or schedule or revisions thereto within sixty days of receipt of such plan or schedule or revisions thereto.

Sec. 4. Section 17b-492 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Eligibility for participation in Part A of the program shall be limited to any resident (1) who is sixty-five years of age or older or who is disabled, (2) whose annual income, if unmarried, is less than **[**thirteen thousand eight hundred dollars**]** three hundred per cent of the federal poverty level for a one person household, or whose annual income, if married, when combined with that of **[**his**]** such resident's spouse is less than **[**sixteen thousand six hundred dollars**]** three hundred per cent of the federal poverty level for a two person household, (3) who is not insured under a policy which provides full or partial coverage for prescription drugs once a deductible amount is met, and (4) on and after September 15, 1991, who pays an annual twenty-five-dollar registration fee to the Department of Social Services. **[**On January 1, 1998, and annually thereafter, the**]** On or after July 1, 2001: (A) Any married applicant may elect to apply for participation in the program under the annual income for a one person household; and (B) when applying for the program, any applicant may deduct from such applicant's annual income verifiable medical and prescription drug expenses incurred for such applicant during the twelve-month period preceding the date of application. Any applicant who makes the deduction contained in this subparagraph shall make available for review by the Department of Social Services documentation of the claimed medical and prescription drug expenses. The commissioner shall, annually, by the adoption of regulations in accordance with chapter 54, increase the income limits established under this subsection over those of the previous fiscal year to reflect the annual inflation adjustment in Social Security income, if any, or any change in the federal poverty levels, whichever is higher. Each such adjustment shall be determined to the nearest one hundred dollars.

(b) Eligibility for participation in Part B of the program shall be limited to any resident who: (1) Is sixty-five years of age or older or who is disabled and does not qualify for Part A of the program; or (2) is under sixty-five years of age and is not insured under a policy that

provides full or partial coverage for prescription drugs once a deductible amount is met and whose annual income, if unmarried, is not more than three hundred per cent of the federal poverty level for a one person household or whose annual income, if married, when combined with that of such resident's spouse is not more than three hundred per cent of the federal poverty level for a two person household. Any person who participates in Part B of the program shall pay an annual registration fee of twenty-five dollars to the Department of Social Services. In determining income eligibility under this subdivision, annual income shall be reduced by the amount of verified annual medical and prescription costs for any applicant. On January 1, 2002, and annually thereafter, the commissioner shall, by the adoption of regulations in accordance with chapter 54, increase the income limits established under this subsection over those of the previous fiscal year to reflect the annual inflation adjustment in Social Security income, if any, or any change in the federal poverty levels, whichever is higher. Each such adjustment shall be determined to the nearest one hundred dollars.

[(b)**]** (c) Payment for a prescription under the program shall be made only if no other plan of insurance or assistance is available to an eligible person for such prescription at the time of dispensing. The pharmacy shall make reasonable efforts to ascertain the existence of other insurance or assistance.

[(c)**]** (d) Any eligible resident who (1) is insured under a policy **[**which**]** that provides full or partial coverage for prescription drugs, and (2) expects to exhaust such coverage, may apply to participate in the program prior to the exhaustion of such coverage. Such application shall be valid for the applicable income year. To be included in the program, on or after the date the applicant exhausts such coverage, **[**he or his**]** the applicant or the applicant's designee shall notify the department that such coverage is exhausted and, if required by the department, shall submit evidence of exhaustion of coverage. Not later than ten days after an eligible resident submits such evidence, **[**he**]** such resident shall be included in Part A or Part B of the program. The

program shall (A) cover prescriptions that are not covered by any other plan of insurance or assistance available to the eligible resident and that meet the requirements of this chapter, and (B) retroactively cover such prescriptions filled after or concurrently with the exhaustion of such coverage. Nothing in this subsection shall be construed to prevent a resident from applying to participate in Part A or Part B of the program as otherwise permitted by this chapter and regulations adopted pursuant to this chapter.

[(d)**]** (e) The Commissioner of Social Services may adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of subsection **[**(c)**]** (d) of this section. Such regulations may provide for the electronic transmission of relevant coverage information between a pharmacist and the department or between an insurer and the department in order to expedite applications and notice.

Sec. 5. Section 17b-493 of the general statutes is repealed and the following is substituted in lieu thereof:

A pharmacist shall, except as limited by subsection (c) of section 20-619 and section 17b-274, substitute a therapeutically and chemically equivalent generic drug product for a prescribed drug product when filling a prescription for an eligible person under Part A or Part B of the program.

Sec. 6. Section 17b-494 of the general statutes is repealed and the following is substituted in lieu thereof:

The Commissioner of Social Services shall adopt regulations, in accordance with the provisions of chapter 54, to establish (1) a system for determining eligibility and disqualification under Part A and Part B of the program, including provisions for an identification number and a renewable, nontransferable identification card; (2) requirements for the use of the identification number and card by the pharmacy and the eligible person; (3) a system of payments; (4) limitations on the maximum quantity per prescription which shall not exceed a thirty-

day supply or one hundred twenty oral dosage units whichever is greater; (5) requirements as to records to be kept by the pharmacy, including patient profiles; (6) products prescribed for cosmetic and other purposes which shall not be covered under the program; and (7) such other provisions as are necessary to implement the provisions of sections 17b-490 to 17b-495, inclusive, as amended by this act.

Sec. 7. Section 17b-495 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The commissioner may enter into an agreement with a fiscal intermediary **[**which**]** that may be an agency of the state, or a person, firm or public or nonprofit corporation, for the administration of the whole or any part of Part A and Part B of the program. Any such contract shall be subject to the provisions of sections 4a-57 and 4a-59, except that preference shall be given to persons, firms or corporations doing business in the state.

(b) The contract shall require the fiscal intermediary to submit quarterly reports to the commissioner on the operation of Part A and Part B of the program, including financial and utilization statistics as to drug use by therapeutic category, actuarial projections, an outline of problems encountered in the administration of the program and suggested solutions to the same and any recommendations to enhance the program.

(c) The commissioner shall verify the propriety and reasonableness of payments to providers, through field audit examinations and other reasonable means, to the extent possible within available appropriations. The commissioner shall submit an annual report, on or before February first of each year, to the Secretary of the Office of Policy and Management and the chairpersons of the joint standing committee of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies outlining the program for carrying out such verifications and including the results of such verifications.

(d) The commissioner shall submit quarterly reports, within thirty days after the end of each fiscal quarter, to the Governor and the chairpersons of the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies and public health. The report shall include a copy of the most recent report of the fiscal intermediary, if any, and (1) the number of consumers eligible for Part A and Part B of the program, (2) the number of consumers utilizing Part A and Part B of the program, (3) an outline of and a report on the educational outreach program, (4) the number of appeals, (5) an outline of problems encountered in the administration of Part A and Part B of the program and suggested solutions and any recommendations to enhance Part A and Part B of the program.

Sec. 8. Section 17b-496 of the general statutes is repealed and the following is substituted in lieu thereof:

Any person aggrieved by any action of the commissioner in connection with the administration of Part A or Part B of the program shall have a right to a hearing before the commissioner in accordance with the provisions of chapter 54.

Sec. 9. Section 17b-498 of the general statutes is repealed and the following is substituted in lieu thereof:

The Commissioner of Social Services shall undertake an educational outreach program to make known the provisions of Part A and Part B of the program to the public, with emphasis on reaching the elderly and the disabled in the state through the various local and state-wide agencies and organizations concerned with the elderly and the disabled, and to all pharmacies and physicians in the state.

Sec. 10. Section 17b-274 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The Commissioner of Social Services shall pay a pharmacist a professional dispensing fee of fifty cents per prescription, in addition

to any other dispensing fee, for substituting a generically equivalent drug product, in accordance with section 20-619, for the drug prescribed by the licensed practitioner for a Medicaid recipient, provided the substitution is not required by federal law or regulation.

(b) The Division of Criminal Justice shall periodically investigate pharmacies to ensure that the state is not billed for a brand name drug product when a less expensive generic substitute drug product is dispensed to a Medicaid recipient. The Commissioner of Social Services shall cooperate and provide information as requested by such division.

(c) A licensed medical practitioner may specify in writing or by a telephonic or electronic communication that there shall be no substitution for the specified brand name drug product in any prescription for a Medicaid, state-administered general assistance, general assistance or ConnPACE recipient, provided (1) the practitioner specifies the basis on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution, and (2) the phrase "brand medically necessary" shall be in the practitioner's handwriting on the prescription form or, if the prohibition was communicated by telephonic communication, in the pharmacist's handwriting on such form, and shall not be preprinted or stamped or initialed on such form. If the practitioner specifies by telephonic communication that there shall be no substitution for the specified brand name drug product in any prescription for a Medicaid, state-administered general assistance, general assistance or ConnPACE recipient, written certification in the practitioner's handwriting bearing the phrase "brand medically necessary" shall be sent to the dispensing pharmacy within ten days. A pharmacist shall dispense a generically equivalent drug product for any drug listed in accordance with the Code of Federal Regulations Title 42 Part 447.332 for a drug prescribed for a Medicaid, state-administered general assistance, general assistance or ConnPACE recipient unless the phrase "brand medically necessary" is ordered in accordance with this subsection. **[**and such pharmacist has received

approval to dispense the brand name drug product in accordance with subsection (d) of this section.**]**

[(d) The Commissioner of Social Services shall establish a procedure by which a pharmacist shall obtain approval from an independent pharmacy consultant acting on behalf of the Department of Social Services, under an administrative services only contract, whenever the pharmacist dispenses a brand name drug product to a Medicaid, state-administered general assistance, general assistance or ConnPACE recipient and a chemically equivalent generic drug product substitution is available, provided such procedure shall not require approval for other than initial prescriptions for such drug product. If such approval is not granted or denied within two hours of receipt by the commissioner of the request for approval, it shall be deemed granted. The pharmacist may appeal a denial of reimbursement to the department based on the failure of such pharmacist to substitute a generic drug product in accordance with this section.**]**

[(e)**]** (d) A licensed medical practitioner shall disclose to the Department of Social Services, **[**or such consultant,**]** upon request, the basis on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution. **[**The Commissioner of Social Services shall establish a procedure by which such a practitioner may appeal a determination that a chemically equivalent generic drug product substitution is required for a Medicaid, state-administered general assistance, general assistance or ConnPACE recipient.**]**

Sec. 11. (NEW) The Commissioner of Social Services shall submit an application for a federal waiver for the purposes of conducting a program to provide prescription drugs to persons who meet the eligibility requirements under the ConnPACE Part B program established in subsection (b) of section 17b-492 of the general statutes, as amended by this act, at the Medicaid price which shall be the average wholesale price reduced by twelve per cent or such other price as may be calculated under the Medicaid program. The state shall pay

the pharmacist a participation incentive fee at a rate of not less than one hundred fifty per cent of the Medicaid dispensing fee. The state shall receive the applicable Medicaid rebate from the pharmaceutical drug companies and shall apply the rebates to offset the costs of the dispensing fee. The waiver shall include the full range of prescription drugs provided under the current Medicaid program. There shall be no asset limit for eligibility.

Sec. 12. (NEW) (a) There is established a Prescription Drug Fair Pricing Review Board. The board shall consist of: (1) Three members appointed by the speaker of the House of Representatives; (2) three members appointed by the president pro tempore of the Senate; (3) three members appointed by the minority leader of the House of Representatives; (4) three members appointed by the minority leader of the Senate; and (5) three members appointed by the Governor. Such members may include, but need not be limited to, members of the General Assembly, representatives of relevant state agencies, pharmacists, physicians, representatives of health care providers who are not physicians, representatives of disabled persons, senior citizens and low income persons having no financial or other affiliation with any health care provider, representatives of health care facilities, representatives of health insurers and representatives of pharmaceutical companies. The Department of Social Services shall provide such staff as is necessary for the performance of the functions and duties of the board.

(b) Not later than January 1, 2002, the board shall establish a schedule of suggested fair manufacturer prices for all prescription drugs sold through the ConnPACE Part A and Part B programs. In establishing such schedule, the board shall consider (1) the prices charged for prescription drugs in other countries, (2) the prices listed on the federal supply schedule, (3) the prices charged to other governmental agencies, health care facilities, health insurance companies and other purchasers, and (4) such other comparable information as the board deems relevant. The fair manufacturer price of any prescription drug, as provided in such schedule, shall not

exceed the manufacturer price for such prescription drug as sold in Canada or the price listed on the federal supply schedule. Not later than January 1, 2002, the board shall establish a reasonable dispensing fee for retail pharmacies applicable to sales through the ConnPACE Part B program. Such fee shall be sufficient to encourage pharmacist participation in the program provided such fee is not less than one hundred fifty per cent of the Medicaid dispensing fee. Not later than January 1, 2002, and annually thereafter, the board shall review such schedule and dispensing fee and may revise such schedule and dispensing fee as the board may determine to be appropriate.

(c) The Commissioner of Social Services shall distribute and post the schedule of suggested fair manufacturer prices established under subsection (b) of this section. The commissioner shall distribute such schedule to all retail pharmacies in this state and shall post such schedule on the Department of Social Services' Internet web site. The commissioner may take any action necessary to implement the provisions of this section including, but not limited to, issuing subpoenas and collecting from any manufacturer, wholesaler or retailer of prescription drugs sold in this state such information as the commissioner deems necessary for the board to carry out its duties under subsection (b) of this section.

(d) The board and the Commissioner of Social Services, in consultation with the Commissioner of Consumer Protection, shall submit a report to the General Assembly not later than January 1, 2002, and annually thereafter, in accordance with section 11-4a of the general statutes, concerning prescription drug prices in this state. Such report shall include, but not be limited to: (1) The schedule of suggested fair manufacturer prices established under subsection (b) of this section; (2) the surveys of retail prices conducted pursuant to subsection (b) of this section for the most commonly used prescription drugs in this state; (3) a financial analysis of the effect of the requirements of this section on prescription drug costs in this state, including the financial savings to public and private health insurance programs and financial savings to individual state residents and employers; and (4) such other findings

and recommendations as the board and the Commissioner of Social Services deem appropriate.

Sec. 13. (NEW) (a) There is established a consumer advisory committee that shall consist of: (1) Two members appointed by the speaker of the House of Representatives; (2) two members appointed by the president pro tempore of the Senate; (3) two members appointed by the minority leader of the House of Representatives; (4) two members appointed by the minority leader of the Senate; and (5) two members appointed by the Governor. Such members shall be appointed not later than October 1, 2001. The consumer advisory committee shall review proposals for, and make recommendations to, the Commissioner of Public Health concerning the award of grants under this section. Said commissioner shall provide such staff as is necessary for the performance of the functions and duties of the consumer advisory committee.

(b) Not later than October 1, 2001, the Commissioner of Public Health shall request proposals to award one or more grants to community health centers, free health care clinics and other nonprofit organizations to educate and assist state residents to purchase prescription drugs at the lowest possible cost. Grants may be awarded under this section for: (1) Identifying and organizing pharmacies, clinics, physicians and other health care providers who can assist state residents in the prescribing and purchasing of prescription drugs at the lowest possible price; (2) assisting and organizing the communications, prescriptions, purchasing, transportation and other activities necessary for state residents to purchase prescription drugs; and (3) any other proposal designed to educate state residents about low cost prescription drug opportunities at the state or federal level or to permit state residents to purchase prescription drugs at the lowest possible price.

(c) The commissioner shall review proposals submitted under subsection (a) of this section and, after the review and upon the recommendation of the consumer advisory committee established

pursuant to subsection (a) of this section, may award one or more grants under this section, provided: (1) All such proposals shall be submitted to the commissioner not later than October 1, 2001; (2) any proposal for which a grant is awarded shall be implemented not later than December 31, 2001, and shall be approved for a duration of not less than one year; and (3) such proposals shall ensure than any prescription drug purchase transaction is approved by a retail pharmacist in this state, who shall receive a fee for approval equal to the Medicaid dispensing fee.

Sec. 14. (NEW) The Governor shall direct the appropriate state officials to join the New England consortium for group purchases of prescription drugs.

Sec. 15. (NEW) On March 31, 2002, and annually thereafter, any manufacturer of prescription drugs which were sold in this state during the preceding calendar year shall file a report with the Commissioner of Consumer Protection. Such report shall disclose the total amount of expenses for advertising and promotions of prescription drugs in this state and in the United States for the preceding calendar year. For purposes of this section, promotions include free samples, media events, gifts, trips, conferences or meals. The annual report shall list expenses for promotions by such categories and such other categories as the manufacturer may determine. Within thirty days of receipt of such report, the Commissioner of Consumer Protection shall file such report with the joint standing committees of the General Assembly having cognizance of matters relating to public health and human services and the Prescription Drug Fair Pricing Review Board. The Prescription Drug Fair Pricing Review Board shall prescribe the form for such report for use by such manufacturers.

Sec. 16. This act shall take effect from its passage.

HS *Joint Favorable Subst.*

PH *Joint Favorable*

JUD	*Joint Favorable*
GAE	*Joint Favorable*
LM	*Joint Favorable*
GL	*Joint Favorable*